

on public lands where the mineral interest is reserved to the United States, including Stock Raising Homestead lands as provided in § 3809.31(d) and (e). When public lands are sold or exchanged under 43 U.S.C. 682(b) (Small Tracts Act), 43 U.S.C. 869 (Recreation and Public Purposes Act), 43 U.S.C. 1713 (sales) or 43 U.S.C. 1716 (exchanges), minerals reserved to the United States continue to be removed from the operation of the mining laws unless a subsequent land-use planning decision expressly restores the land to mineral entry, and BLM publishes a notice to inform the public.

(b) This subpart does not apply to lands in the National Park System, National Forest System, and the National Wildlife Refuge System; acquired lands; or lands administered by BLM that are under wilderness review, which are subject to subpart 3802 of this part.

(c) This subpart applies to all patents issued after October 21, 1976 for mining claims in the California Desert Conservation Area, except for any patent for which a right to the patent vested before that date.

(d) This subpart does not apply to private land except as provided in paragraphs (a) and (c) of this section. For purposes of analysis under the National Environmental Policy Act of 1969, BLM may collect information about private land that is near to, or may be affected by, operations authorized under this subpart.

(e) This subpart applies to operations that involve locatable minerals, including metallic minerals; some industrial minerals, such as gypsum; and a number of other non-metallic minerals that have a unique property which gives the deposit a distinct and special value. This subpart does not apply to leasable and salable minerals. Leasable minerals, such as coal, phosphate, sodium, and potassium; and salable minerals, such as common varieties of sand, gravel, stone, and pumice, are not subject to location under the mining laws. Parts 3400, 3500 and 3600 of this title govern mining operations for leasable and salable minerals.

[65 FR 70112, Nov. 21, 2000, as amended at 66 FR 54860, Oct. 30, 2001]

### **§ 3809.3 What rules must I follow if State law conflicts with this subpart?**

If State laws or regulations conflict with this subpart regarding operations on public lands, you must follow the requirements of this subpart. However, there is no conflict if the State law or regulation requires a higher standard of protection for public lands than this subpart.

### **§ 3809.5 How does BLM define certain terms used in this subpart?**

As used in this subpart, the term:

*Casual use* means activities ordinarily resulting in no or negligible disturbance of the public lands or resources. For example—

(1) Casual use generally includes the collection of geochemical, rock, soil, or mineral specimens using hand tools; hand panning; or non-motorized sluicing. It may include use of small portable suction dredges. It also generally includes use of metal detectors, gold spears and other battery-operated devices for sensing the presence of minerals, and hand and battery-operated drywashers. Operators may use motorized vehicles for casual use activities provided the use is consistent with the regulations governing such use (part 8340 of this title), off-road vehicle use designations contained in BLM land-use plans, and the terms of temporary closures ordered by BLM.

(2) Casual use does not include use of mechanized earth-moving equipment, truck-mounted drilling equipment, motorized vehicles in areas when designated as closed to “off-road vehicles” as defined in § 8340.0-5 of this title, chemicals, or explosives. It also does not include “occupancy” as defined in § 3715.0-5 of this title or operations in areas where the cumulative effects of the activities result in more than negligible disturbance.

*Exploration* means creating surface disturbance greater than casual use that includes sampling, drilling, or developing surface or underground workings to evaluate the type, extent, quantity, or quality of mineral values present. Exploration does not include activities where material is extracted for commercial use or sale.

*Minimize* means to reduce the adverse impact of an operation to the lowest practical level. During review of operations, BLM may determine that it is practical to avoid or eliminate particular impacts.

*Mining claim* means any unpatented mining claim, millsite, or tunnel site located under the mining laws. The term also applies to those mining claims and millsites located in the California Desert Conservation Area that were patented after the enactment of the Federal Land Policy and Management Act of October 21, 1976. Mining “claimant” is defined in §3833.0–5 of this title.

*Mining laws* means the Lode Law of July 26, 1866, as amended (14 Stat. 251); the Placer Law of July 9, 1870, as amended (16 Stat. 217); and the Mining Law of May 10, 1872, as amended (17 Stat. 91); as well as all laws supplementing and amending those laws, including the Building Stone Act of August 4, 1892, as amended (27 Stat. 348); the Saline Placer Act of January 31, 1901 (31 Stat. 745); the Surface Resources Act of 1955 (30 U.S.C. 611–614); and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

*Mitigation*, as defined in 40 CFR 1508.20, may include one or more of the following:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- (5) Compensating for the impact by replacing, or providing substitute, resources or environments.

*Operations* means all functions, work, facilities, and activities on public lands in connection with prospecting, exploration, discovery and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws; reclamation of disturbed areas; and all other reason-

ably incident uses, whether on a mining claim or not, including the construction of roads, transmission lines, pipelines, and other means of access across public lands for support facilities.

*Operator* means a person conducting or proposing to conduct operations.

*Person* means any individual, firm, corporation, association, partnership, trust, consortium, joint venture, or any other entity conducting operations on public lands.

*Project area* means the area of land upon which the operator conducts operations, including the area required for construction or maintenance of roads, transmission lines, pipelines, or other means of access by the operator.

*Public lands*, as defined in 43 U.S.C. 1702, means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the BLM, without regard to how the United States acquired ownership, except—

- (1) Lands located on the Outer Continental Shelf; and
- (2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

*Reclamation* means taking measures required by this subpart following disturbance of public lands caused by operations to meet applicable performance standards and achieve conditions required by BLM at the conclusion of operations. For a definition of “reclamation” applicable to operations conducted under the mining laws on Stock Raising Homestead Act lands, see part 3810, subpart 3814 of this title. Components of reclamation include, where applicable:

- (1) Isolation, control, or removal of acid-forming, toxic, or deleterious substances;
- (2) Regrading and reshaping to conform with adjacent landforms, facilitate revegetation, control drainage, and minimize erosion;
- (3) Rehabilitation of fisheries or wildlife habitat;
- (4) Placement of growth medium and establishment of self-sustaining revegetation;
- (5) Removal or stabilization of buildings, structures, or other support facilities;

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(6) Plugging of drill holes and closure of underground workings; and

(7) Providing for post-mining monitoring, maintenance, or treatment.

*Riparian area* is a form of wetland transition between permanently saturated wetlands and upland areas. These areas exhibit vegetation or physical characteristics reflective of permanent surface or subsurface water influence. Typical riparian areas include lands along, adjacent to, or contiguous with perennially and intermittently flowing rivers and streams, glacial potholes, and the shores of lakes and reservoirs with stable water levels. Excluded are areas such as ephemeral streams or washes that do not exhibit the presence of vegetation dependent upon free water in the soil.

*Tribe* means, and *Tribal* refers to, a Federally recognized Indian tribe.

*Unnecessary or undue degradation* means conditions, activities, or practices that:

(1) Fail to comply with one or more of the following: the performance standards in § 3809.420, the terms and conditions of an approved plan of operations, operations described in a complete notice, and other Federal and state laws related to environmental protection and protection of cultural resources;

(2) Are not “reasonably incident” to prospecting, mining, or processing operations as defined in § 3715. 0–5 of this chapter; or

(3) Fail to attain a stated level of protection or reclamation required by specific laws in areas such as the California Desert Conservation Area, Wild and Scenic Rivers, BLM-administered portions of the National Wilderness System, and BLM-administered National Monuments and National Conservation Areas.

[65 FR 70112, Nov. 21, 2000, as amended at 66 FR 54860, Oct. 30, 2001]

### § 3809.10 How does BLM classify operations?

BLM classifies operations as—

(a) Casual use, for which an operator need not notify BLM. (You must reclaim any casual-use disturbance that you create. If your operations do not qualify as casual use, you must submit a notice or plan of operations, which-

ever is applicable. See §§ 3809.11 and 3809.21.);

(b) Notice-level operations, for which an operator must submit a notice (except for certain suction-dredging operations covered by § 3809.31(b)); and

(c) Plan-level operations, for which an operator must submit a plan of operations and obtain BLM’s approval.

### § 3809.11 When do I have to submit a plan of operations?

(a) You must submit a plan of operations and obtain BLM’s approval before beginning operations greater than casual use, except as described in § 3809.21. Also see §§ 3809.31 and 3809.400 through 3809.434.

(b) You must submit a plan of operations for any bulk sampling in which you will remove 1,000 tons or more of presumed ore for testing.

(c) You must submit a plan of operations for any operations causing surface disturbance greater than casual use in the following special status areas where § 3809.21 does not apply:

(1) Lands in the California Desert Conservation Area (CDCA) designated by the CDCA plan as “controlled” or “limited” use areas;

(2) Areas in the National Wild and Scenic Rivers System, and areas designated for potential addition to the system;

(3) Designated Areas of Critical Environmental Concern;

(4) Areas designated as part of the National Wilderness Preservation System and administered by BLM;

(5) Areas designated as “closed” to off-road vehicle use, as defined in § 8340.0–5 of this title;

(6) Any lands or waters known to contain Federally proposed or listed threatened or endangered species or their proposed or designated critical habitat, unless BLM allows for other action under a formal land-use plan or threatened or endangered species recovery plan; and

(7) National Monuments and National Conservation Areas administered by BLM.

### § 3809.21 When do I have to submit a notice?

(a) You must submit a complete notice of your operations 15 calendar days